



Members Update

Dear member,

Welcome to the May 2019 member's update.

This month will provide you with an update on the SG Amnesty and we will look at what happens if – or when – a superannuation fund returns superannuation contributions for your employees.

1. The SG Amnesty

As you may be aware, almost a year ago the government announced a 12-month amnesty period for the historical underpayment of the superannuation guarantee, in anticipation of the full implementation of STP.

Under the proposal, an employer that has an SG shortfall amount in any period from 1 July 1992 up to 31 March 2018, would:

- voluntarily disclose SG shortfall amounts, relating to any period from 1 July 1992 to 31 March 2018, within the Amnesty period (24 May 2018 to 23 May 2019);
- disclose SG shortfall amounts that have not previously been disclosed;
- make the payment of the SG shortfall amount during the 12-month Amnesty period; and
- not have been previously informed that the ATO is examining (or that it intends to examine) the employer's SG compliance for the relevant quarter.

In return, the proposal indicated that:

- the administration component will be waived
- part 7 penalty will not apply – (if an employer lodges their SGC statement late, or fails to provide a statement or information to the ATO when asked for it during an audit, the employer is liable for a penalty (Part 7 penalty) up to a maximum penalty of 200% of the amount of the charge payable.
- any catch-up SG payments will be tax deductible – (i.e payments used to offset the SG Charge)

The legislation to give effect to the proposed amnesty was introduced into Parliament on 24 May 2018. However, the legislation was not enacted and did not become law when Parliament concluded on 3 April 2019.

The ATO have advised that they will write to employers who took action to get their SG obligations back on track in anticipation of the proposed amnesty.

Understanding your obligations when superannuation contributions are returned

As you may be aware, Superstream has been in place for a number of years now and whilst we may understand an employer's obligations, it is also useful to know the superannuation fund's obligations in allocating the contributions they receive.

If the superannuation fund receives a contribution with sufficient information to allocate it to a member account, they must do so within three days. This is the case even if the contribution is missing some mandatory information, such as the employee's phone number.

If an employer provides incomplete data, the superannuation fund must, within five business days of receiving the contribution details, ask the employer to provide the correct and complete information.

The employer then has 10 business days to make all reasonable efforts to provide the requested information.

If the fund is still unable to allocate the contribution to a member after the follow-up request period has expired, they must refund the contribution to the employer within 20 business days of having received the contribution from the employer.

It is important to note that when a refund occurs, the contribution is taken not to have been made to the fund by the employer and as a result, the employer may be liable for the SG Charge Statement.

Practice Statement Law Administration (General Administration) PS LA 2007/1 ('PS LA 2007/1 (GA)') outlines circumstances where tax officers may decide, for administrative reasons, to not raise an assessment of SGC against an employer, or to allow an employer's objection to a SGC assessment.

This may be the case where it is clear the employer took all reasonable steps to comply with their obligations by the due date.

Paragraphs 9 to 10 state the following:

9. An employer may attempt to contribute to a superannuation fund where the employee is no longer a member, or to an RSA no longer held by an employee. In these circumstances the superannuation fund; the RSA provider; or the approved clearing house will return the payment to the employer. However, the payment may not be returned until after the due date for contributions has passed.

10. An assessment of superannuation guarantee charge need not be raised provided that a tax officer is satisfied that:

- the employer sent the payment within sufficient time for the approved clearing house; trustee of the superannuation fund or RSA to receive the payment within 28 days of the end of the quarter
- the employer tried to contribute to the last known superannuation fund or RSA belonging to the employee
- the employer could not reasonably have been expected to know that the employee's benefits were no longer held in that superannuation fund or RSA, and
- the employer takes reasonable steps to identify a current superannuation fund or RSA for the employee and makes an appropriate contribution to it as soon as practicable.

With End of Year fast approaching, please join us for our May 2019 webinar to be held on 29th May 2019 at 11 am - "STP - understanding your payroll obligations"

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